



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
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JANICE K. BREWER
Governor

J. D. GHELFI
Board Chair

ALAN EVERETT
Director

Arizona State Liquor Board Hearing Minutes
April 4, 2013

Members Present: J.D. Ghelfi - Chair, Bill DuPont – Vice-Chair, Robin Cantrell, Tim Linden, Vikki Scarafiotti, Jim Carruthers

Members Absent: None

Counsel Present: Sarah Selzer, Assistant Attorney General
Diana Rasner, Assistant Attorney General

Staff Present: Marlene Buffa, Interim Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on April 4, 2013 at 9:07 a.m. with Mr. Ghelfi presiding.

Roll Call

All board members were present.

B. Agenda: review, consideration and action

1. Restaurant Liquor License No. 12079267 - Original Application

Mustafa Erdem, Agent
Kaya Business Ventures, LLC
Gus's New York Pizza
2015 N. Power Road #106
Mesa, AZ 85215

This matter was continued from the March 7, 2013 hearings and was set for hearing due to Department protest. The applicant, Mustafa Erdem, appeared at the hearing and was represented by counsel, Peter Schelstraete. Assistant Attorney General Sarah Selzer appeared on behalf of the Department of Liquor Licenses and Control. Investigators Mario Trevizo and Alan Parris appeared on behalf of the Department of Liquor Licenses and Control, were sworn and testified. Assistant Attorney General Diana Rasner was present to provide legal advice to the Board.

Mr. Erdem testified that he is the Agent and 50% owner of a Gus's New York Pizza located on 91st Avenue. He stated that the business is for sale and he intends for the Power Road location to be the primary focus of his operational involvement. Ms. Selzer questioned Mr. Erdem about liquor violations that occurred at the 91st Avenue; one involving an act of violence and one involving an encounter with Investigator Trevizo.

Investigator Mario Trevizo was called as a witness and testified. He described the events of the incident involving Mr. Erdem. He also described violent acts which have occurred at the 91st Avenue location while Mr. Erdem was on the premises. Based on the history of violations and Mr. Erdem's 50% ownership of the 91st Avenue location, Investigator Trevizo stated the Department is concerned these types of problems will continue at the Mesa location.

Investigator Alan Parris was called as a witness and testified. He investigated this application and submitted a report to the Department with two violations. He stated there was incorrect information on Mr. Erdem's application including two undisclosed arrests. Investigator Parris met with Mr. Erdem and reviewed his application with him in October 2012. They discussed a 2008 DUI. Investigator Parris stated the false statements are the basis of the applicant's capability, reliability and qualification, in addition to his involvement in the incidents at the 91st Avenue location.

Mr. Schelstraete made closing statements. Mr. Linden made a motion to deny Liquor License No. 12079267 because the application does not meet the capability, reliability and qualification standard, as required by A.R.S. § 4-203; based on the list of calls for service, the liquor violations, leaving the location when an officer made it clear who he was and what he was there for, and not listing all of the misdemeanors on the application. Location is not an issue.

Motion to deny -	Linden
Seconded -	Carruthers
Yay -	Ghelfi, Carruthers, DuPont, Cantrell, Linden, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	License denied

Mr. DuPont made a motion to revoke the Interim Permit.

Motion to revoke Interim Permit -	DuPont
Seconded -	Scarafiotti
Yay -	Ghelfi, Carruthers, DuPont, Cantrell, Linden, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Interim Permit revoked

2. Restaurant Liquor License No. 12079354 - Original Application

Saundra Ann King, Agent
First Watch Media, Inc.
The Original BBQ 2 U
2010 E. Broadway Road
Phoenix, AZ 85040

This matter is set for hearing because the City of Phoenix recommended disapproval of this application as to location only. The applicant, Saundra Ann King, appeared at the hearing and was not represented by counsel. The applicant waived the right to an attorney. Assistant City Attorney Robert Smith appeared on behalf of the City of Phoenix. Ed McCartney, John Flynn, Reverend Bernard Black, Reverend Kermit Brannon, and Michael Harry, Sr. appeared as witnesses for the City of Phoenix and were sworn and testified. Ms. King was sworn and testified.

Ms. King provided background information about herself and her current experience in the restaurant business. Ms. King and her husband have completed both basic and management liquor law training. The restaurant has been in operation since June 10, 2012. The location is within 25 feet of a church property.

Reverend Bernard Black was called as a witness and testified. Rev. Black is the pastor of the South Phoenix Baptist Church and owns the property on which it is located. Rev. Black is also the landlord for the applicant's restaurant. He has no issue about the capability, reliability and qualification of the applicant. His objection is the possibility of having liquor available at the restaurant which is in close proximity to the church. Rev. Black has owned the building for about 25 years. Mr. Smith clarified that state statutes do not require a 300 feet distance for a Series 12 Restaurant Liquor License.

Reverend Kermit Brannon was called as a witness and testified. Rev. Brannon is a member of the South Phoenix Baptist Church. He testified there was never a liquor license at the restaurant location in the past. His objection is with the location only.

Mr. Ghelfi made a motion to convene in executive session to receive legal advice.

Motion to convene in executive
session for legal advice -

Seconded -

Yay -

Nay -

Abstained -

Disposition -

Ghelfi

Cantrell

Ghelfi, DuPont, Carruthers, Cantrell, Linden, Scarafiotti

None

None

Convene in executive session

The Board convened in executive session at 12:17 p.m. and reconvened in open session at 12:24 p.m.

Ed McCartney was called as a witness and testified about the location. He stated the vicinity experienced alcohol-related issues in the past and has since improved. Mr. McCartney does not want to re-introduce liquor in the area. John Flynn, Jr. was called as a witness and testified about the location. Mr. Flynn has been a member of the church for nine years.

Michael E. Harry, Sr. was called as a witness and testified about the location. Mr. Harry has been a member of the church since 1984. He discussed various churches and non-alcohol businesses in the area. He expressed his concerns about an existing alcohol and drug treatment center being in close proximity to a liquor licensed facility.

Ms. King gave a closing summary. She described how she came into possession of the restaurant. Ms. King recognizes the amount of vice in the neighborhood. She stated it is her intention to abide by the law, to obtain a liquor license and operate as a restaurant.

Mr. Smith gave closing arguments for the City of Phoenix. He discussed the best interests of the community and stated there are no petitions of support in favor of the liquor license. Although state statute does not prohibit licensing this location, Mr. Smith repeated the opposition expressed by the church and the landlord.

There was Board discussion. Mr. DuPont made a motion as to Liquor License #12079354. There is no contest of applicant's capability, reliability and qualification as required by A.R.S. § 4-203. As to location, the business is not under the restrictions of A.R.S. § 4-407, that the restaurant can be issued a liquor license, a Series 12; the applicant has worked with the police department in this area concerning provisions to ensure the safety of customers; that there have been investments to upgrade the business and obtain a Certificate of Occupancy, and that the public convenience requires that the best interest of the community will be served, as required by A.R.S. § 4-203, by granting the liquor license to the application.

Motion to grant license-

Seconded -

Yay -

Nay -

Abstained -

Disposition -

DuPont

Scarafiotti

There was Board discussion. Mr. Ghelfi made a motion to convene in executive session to receive legal advice.

Motion to convene in executive
session for legal advice -

Seconded -

Yay -

Nay -

Abstained -

Disposition -

Ghelfi

Linden

Ghelfi, DuPont, Carruthers, Cantrell, Linden, Scarafiotti

None

None

Convene in executive session

The Board convened in executive session at 1:35 p.m. and reconvened in open session at 1:51 p.m.

Mr. Ghelfi suggested to the applicant and witnesses that perhaps the matter could be resolved with a discussion and compromise between both sides. Rev. Black asked if the license can be transferred from one location to another. Mr. Ghelfi explained that the Series 12 cannot be moved to another location.

Mr. Dupont moved to rescind the motion, and seconded by Ms. Scarafiotti.

Motion to rescind the motion -	Dupont
Seconded -	Scarafiotti
Yay -	Ghelfi, Carruthers, DuPont, Cantrell, Linden, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Motion rescinded

Mr. Ghelfi asked Mr. Smith if he sees any problems with taking a 15 minute break. Mr. Smith indicated he does not represent the community or the church members and cannot provide any advice to them. Mr. Smith stated the City's position would not change.

Mr. DuPont made the motion to reinstate his previous motion. As to Liquor License #12079354, there is no contest of applicant's capability, reliability and qualification as required by A.R.S. 4-203. As to location, the business is not under the restrictions of A.R.S. § 4-407, that the restaurant can be issued a liquor license, a Series 12; the applicant has worked with the police department in this area concerning provisions to ensure the safety of customers; that there have been investments to upgrade the business and obtain a Certificate of Occupancy, and that the public convenience requires that the best interest of the community will be served, as required by A.R.S. § 4-203, by granting the liquor license to the application.

Motion to reinstate the motion -	Dupont
Seconded -	Scarafiotti
Yay -	DuPont, Cantrell, Scarafiotti, Linden, Ghelfi, Carruthers
Nay -	None
Abstained -	None
Disposition -	Motion reinstated

Mr. Ghelfi discussed the definition of "community" and cited R-19-102(8) and (9).

R-19-102. Granting a License for a Certain Location

8. The compatibility of the proposed business with other activity in close proximity.

9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.

Motion to grant the license	Dupont
Seconded -	Scarafiotti
Yay -	DuPont, Cantrell, Scarafiotti
Nay -	Linden, Ghelfi, Carruthers
Abstained -	None
Disposition -	Tied

Ms. Selzer stated the vote needs to be 4-2 decision and that a two-thirds majority vote is needed. Mr. Ghelfi made a motion to convene in executive session to receive legal advice.

Motion to convene in executive session for legal advice -	Ghelfi
Seconded -	Linden
Yay -	Ghelfi, DuPont, Cantrell, Linden, Carruthers, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 2:08 p.m. and reconvened in open session at 2:15 p.m.

There was Board discussion about defining "community" as it pertains to this location. Mr. Linden made a motion to deny the license as to location only. There is no contest of applicant's capability, reliability and qualification. The public convenience requires that the best interest of the community will not be served, as required by A.R.S. § 4-203, by granting the liquor license to the application, based on R-19-102(8), the compatibility of the proposed business with other activity in close proximity.

Motion to deny license -	Linden
Seconded -	Carruthers
Yay -	Linden, Carruthers, DuPont
Nay -	Scarafiotti, Ghelfi, Cantrell
Abstained -	None
Disposition -	Tied

There was Board discussion about the difficulty of making their decision. Mr. Smith suggested there are three of the twelve criteria in R19-1-102 that are at issue: (1) Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in, own or lease property in close proximity; (8) and (9). Lillian Black provided an aerial map for demonstrative purposes to illustrate proximity. Mr. Smith stated the location is not in the best interest of the community according to the criteria listed in R19-1-102. Mr. Ghelfi made a motion to convene in executive session to receive legal advice.

Motion to convene in executive session for legal advice -	Ghelfi
Seconded -	Linden
Yay -	Ghelfi, DuPont, Cantrell, Linden, Carruthers, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 3:11 p.m. and reconvened in open session at 3:17 p.m.

Ms. Scarafiotti referenced A.R.S. § 4-201(F), because the Board cannot reach a decision and there is an even number of Board members, and moved to request a hearing be conducted by an Administrative Law Judge at the request of this Board to make a findings and recommendations for use by this Board to grant or deny this license. Mr. Ghelfi explained the procedural aspects of A.R.S. § 4-201(F). Mr. DuPont asked for additional information and Ms. Selzer provided clarification.

Motion to move the decision to an Administrative Law Judge -	Scarafiotti
Seconded -	Cantrell
Yay -	Cantrell, Scarafiotti
Nay -	Linden, DuPont, Ghelfi, Carruthers
Abstained -	None
Disposition -	Motion fails. Issue to be resolved today.

Mr. Linden moved the Board finds that the qualifications of the applicant are not contested; the record before the Board establishes that the applicant is capable, qualified and reliable as required by A.R.S. § 4-203 to hold a license; the Board further finds that public convenience does require and the best interests of the community will not be served by granting this license as required by A.R.S. § 4-203; and the application be denied based, as stated before, by R19-1-102(8), the compatibility of the proposed business with other activity in close proximity.

Motion to request deny -	Linden
Seconded -	DuPont
Yay -	Linden, DuPont, Carruthers
Nay -	Cantrell, Scarafiotti, Ghelfi
Abstained -	None
Disposition -	Motion fails.

There was Board discussion about best interest of the community with respect to the compatibility of the proposed business with other activity in close proximity.

Mr. Linden moved to restate the previous motion: The Board finds that the qualifications of the applicant are not contested; the record before the Board establishes that the applicant is capable, qualified and reliable as required by A.R.S. § 4-203 to hold a license; the Board further finds that public convenience does require and the best interests of the community will not be served by granting this license as required by A.R.S. § 4-203; and the application be denied based, as stated before, by R19-1-102(8), the compatibility of the proposed business with other activity in close proximity.

Motion to request deny -	Linden
Seconded -	DuPont
Yay -	Linden, DuPont, Scarafiotti, Cantrell, Carruthers
Nay -	Ghelfi
Abstained -	None
Disposition -	License is denied as to location only

C. Minutes Review, consideration and action

Motion to approve minutes of March 5, 2012

Motion to approve -	DuPont
Seconded -	Carruthers
Yay -	Linden, DuPont, Carruthers, Cantrell, Scarafiotti, Ghelfi
Nay -	None
Abstained -	None
Disposition -	Motion passes

Motion to approve minutes of March 5, 2012 – Executive Session

Motion to approve -	Scarafiotti
Seconded -	Cantrell
Yay -	Linden, DuPont, Carruthers, Cantrell, Scarafiotti, Ghelfi
Nay -	None
Abstained -	None
Disposition -	Motion passes

Motion to approve minutes of March 19, 2012

Motion to approve -	Carruthers
Seconded -	Cantrell
Yay -	DuPont, Carruthers, Cantrell, Scarafiotti, Ghelfi
Nay -	None
Abstained -	Linden
Disposition -	Motion passes

Motion to approve minutes of July 27, 2012

Motion to approve -	Linden
Seconded -	DuPont
Yay -	Linden, DuPont, Ghelfi
Nay -	None
Abstained -	Carruthers Cantrell Scarafiotti
Disposition -	Motion passes

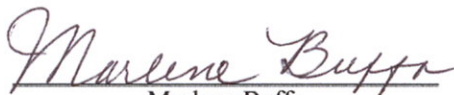
Motion to approve minutes of September 20, 2012

Motion to approve -	DuPont
Seconded -	Linden
Yay -	Linden, DuPont, Ghelfi Cantrell
Nay -	None
Abstained -	Carruthers, Scarafiotti
Disposition -	Motion passes

D. Call to the Public

None.

The Board adjourned at 3:44 p.m.



Marlene Buffa
Interim Administrator of the
Arizona State Liquor Board

6-13-13

Date